IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE SIDE.

CRIMINAL APPEAL NO. 327 OF 1998

Ramrao Dattoba Deshmukh ..... Appellant

versus

The State of Maharashtra ..... Respondents

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Mr. M.S.Mohite for the appellant.
Mr. D.R. More APP for the State.

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CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATED : 4TH AUGUST, 2005

ORAL JUDGEMENT (Per Palshikar, J.) :

1. Being aggrieved by the judgment dated 23-1-1998 passed by the II Additional Sessions Judge, Satara in Sessions Case No. 244 of 1990 appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the

appellant and the learned APP, we have srcutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story briefly stated is that on 22-9-1990 Sanjay Shamrao Deshmukh informed that there was dispute between his father Shamrao and uncle Ramrao on account of agricultural land and well. On 22-0-1990 in the morning at about 8.00 a.m. He was sitting in front wada of Babasaheb Deshmukh. He heard quarreling sound from his house. He came there. He found that Devdhan Lalasaheb Deshmukh had held his father, uncle Ramrao Dattoba Deshmukh hit on his head i.e. on the head of his father, with iron bar. Aunts Krishnabai Ramrao deshmukh and Rajlaxmi Devdhan Deshmukh were standing there and instigating them to hit his father. When he reached near his father, Sangita and Asha, who were daughters of his uncle, were standing near the door, pelted stone on him. By the time, Waman Deshmukh, Prakash Anandrao etc. came there. His father bad became unconscious. They took him to doctor who gave treatment and asked them to take him to Civil Hospital, Satara. As they were about to take him, doctor told him that he is dead. On the basis of this information the police registered crime No.98 of 1990 of Vaduj Police Station for the offence punishable under section 147, 148, 302 read with 149 of IPC.

4. Thereafter investigation was conducted by the police and four persons

belonging to the family of Accused no.1 Ramrao were prosecuted under section 147, 148, 302 read with 149 of IPC. The prosecution examined ten witnesses to prove its case and the learned trial Judge on the basis of this evidence came to the conclusion that the prosecution has proved assault by accused no.1 Ramrao. He found the evidence to be inadequate as against other accused persons. He therefore acquitted the rest three accused. This conviction under section 302 of IPC as recorded by the learned trial Judge is questioned in this appeal. The complaint was lodged by P.w. 2 Sanjay Deshmukh who is son of the deceased and who at the relevant time and date was sitting 250 ft. away from his house. He heard commotion and therefore ran towards his house to find the accused no.1 assaulting the victim with iron bar. Accused no.2 holding the victim, accused nos. 3 and 4 instigating the accused to beat the victim and two daughters of accused no.1 was pelting stones on the witness P.w. 2 Sanjay i.e. the complainant. Basically it is the eye witness account of this P.w. 2 son of the victim which is used by the learned trial Judge for convicting the appellant. It is pertinent to note that the evidence of this very witness was found grossly inadequate by the learned trial Judge and he therefore proceeded to acquit the other accused persons. It is also necessary to note that no satisfactory reasons are recorded by the learned trial Judge for so accepting the evidence of P.w. 2 Sanjay. No reasoning is forthcoming as to why P.w. 2 Sanjay is required to be believed in so far as the allegations against accused no.1 is concocered and is not liable to be believed in so far as allegations against accused nos.2, 3 and 4

are concerned. Primafacie it appears that the learned Judge has not used the same yardsticks for appreciation of the entire evidence on record. However, we will reappreciate the evidence by ourselves to examine the contentions raised by the learned counsel appearing on behalf of the appellant. According to him, the learned Judge could not have been convicted the accused no.1 alone. Charge itself was under section 302 read with 149 IPC. Having found that 147, 148 and 149 was not committed, conviction under sec. 302 IPC simplicitor was impermissible in law. The learned counsel then contended that even if it is assumed that the incident can be considered as a solitary attack by accused no.1 the evidence as deposed to by P.w. 2 who claims to be the eye witness is grossly inadequate to warrant conclusion of guilt. The learned counsel has pointed out to us several contradictions, errors and omissions in the evidence of P.w. 2 , some of which has been accepted by the trial Judge himself to contend that the evidence of P.w. 2 is wholly untrustworthy. According to him, if this evidence is rejected, there is nothing else on record on the basis of which the conviction of the appellant could be maintained.

5. We will examine these contentions on reappreciation of the evidence. P.w. 2 Sanjay, who is the son of the victim Shamrao and claims to be eye witness. He has filed the FIR and in the FIR he has stated that accused no.2 Deodhar had held the victim Shamrao. Accused no.4 Rajlaxmi hit the victim by iron bar and then the victim fell down. At that time Krishnabai wife of Ramrao and

Rajlaxmi wife of Deodhar were standing in the house of Ramrao and were shouting and instigating accused nos. 1 and 2 to hit the victim and not to leave him alive. According to FIR at that time when the witness i.e. the complainant went to the house, his mother i.e. wife of the victim was sitting on the stairs in front of their door and was shouting pleading to the accused persons not to hit her husband. He has mentioned in the FIR that Sangita and Asha were pelting stones at him. He then proceeds to state that neighbours Waman, Prakash and Anant came on the spot helped him to lift the victim and take him to the hospital from where he was further taken to the civil hospital at Satara. When the complainant has deposed in court that he did not mention about stone pelting by Asha and Sangita, he did not mention about Waman, Prakash and Anant helping him to lift the injured father to take him to the primary health centre, but in the cross examination it is obvious that he has stated something which was not stated by him before police and he has omitted to say something which he has said before police. It creates reasonable doubt in the mind of a prudent man as to whether there is any truth in what he has said, and that he has admitted the enmity between the parties. Therefore he has grudge against the accused persons and he has made positive attempts to say as many members of the family of the accused had assaulted Shamrao.

6. P. W. 9 Dr. Jadhav is examined and he has deposed that the death was caused by injury on head and the injury was 3 ½ inch deep. He proved

homicidal death of Shamrao. Exh. 39 is the memo of recovery of the iron bar at the instance of accused. But the panchanama discloses that there was no blood staines or mark of blood on the iron bar. P.w. 2 has stated that the injury caused to Shamrao was profusely bleeding. Doctor has stated that the hit was very hard and yet there is no blood on the iron bar allegedly recovered from the house of the victim. It is pertinent to note that police arrived at the spot immediately but nothing was found by them. It took four days to recover the iron bar from behind the door of the house of accused Ramrao. It is hard to believe that if a person has factually assaulted by iron bar he would keep it in his house for anybody to find. Assuming that it was so recovered, the absence of any blood stains on it creates serious doubt as to whether it was the very iron bar which was used for assaulting the victim. Waman, Prakash and Anant have been examined but they have turned hostile. They do not corroborate the testimony of P.w. 2 Sanjay. According to the learned Judge in the absence of corroboration, the evidence was not acceptable as far as P.ws. 2 and 3 are concerned. In our opinion, if the evidence of this witness is not acceptable as against three of the accused persons but to accept it against 4th accused, when the deposition is made with contradictions, omissions and improvements, is impermissible in law.

7. It has come in evidence that at the time when the incident occurred, the wife of the victim was there and it is obvious that there would have been eye witness yet they were not examined and failure on the part of the prosecution to examine the possible eye witnesses also must have the telling effect on the

correctness or credibility of the prosecution case. Apparently there is no reason for withholding the wife of the victim, may be she would have been stated everything correctly before the court. Other three persons who came on the spot immediately have been examined but have turned hostile. In such circumstances, the inadequacy of the evidence becomes more alarming, it becomes difficult to convict or to sustain the conviction on such flimsy evidence of eye witness. Admittedly they are on enimical terms with the accused persons. Hostility of other witnesses, non examination of important witnesses, all these goes to show that the truth have not come before the court. The court in fact did hold so in so far as accused Nos. 2 and 3 are concerned, and proceeded to acquit them. Having so done the learned Judge therefore erred in convicting the appellant alone. In our opinion, this cannot be justified and accused also deserves to be given benefit of doubt which arose because of uncertain and inadequate presentation of the case by the prosecution. In the result, therefore the appeal succeeds and is allowed,. The order of conviction and sentence is set aside. The accused is already on bail and his bail bonds are canceled.

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